

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Authorizing Permissive Use of the “Next)	GN Docket No. 16-142
Generation” Broadcast Television Standard)	
)	

COMMENTS OF MEDIACOM COMMUNICATIONS CORPORATION

Mediacom Communications Corporation (“Mediacom”) hereby submits its comments in response to the Notice of Proposed Rulemaking (“NPRM”) in the above-captioned proceeding.^{1/} Mediacom, which is a member of several organizations that are active participants in this proceeding,^{2/} is filing these separate comments to draw specific attention to two discrete issues presented by the Commission’s proposed “voluntary” transition to the “Next Generation” ATSC 3.0 television standard – issues that are critically important to ensuring that this “voluntary” transition does not lead to service disruptions for MVPDs and their tens of millions of television-viewing customers.

I. INTRODUCTION

On April 13, 2016, four groups representing the broadcast industry filed a petition for rulemaking (the “Petition”) asking the Commission to commence a proceeding to permit the “voluntary” transition of TV broadcast stations from the current digital TV format (now called

^{1/} *In the Matter of Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, Notice of Proposed Rulemaking, GN Docket No. 16-142 (rel. Feb. 24, 2017).

^{2/} *See, e.g.*, Comments of NCTA, GN Docket No. 16-142 (filed May 26, 2016); Comments of the American Cable Association, GN Docket No. 16-142 (filed May 26, 2016); Letter of Mike Chappell, Executive Director of the American Television Alliance, to Marlene H. Dortch, Secretary of FCC, GN Docket No. 16-142 (filed Dec. 7, 2016).

“ATSC 1.0”) to a set of new standards collectively referred to as “ATSC 3.0.”^{3/} On February 2, 2017, as part of a new transparency initiative and after receiving comments on the Petition, Chairman Pai made public a draft version of a rulemaking notice that he was circulating for consideration by the full Commission.^{4/} Three weeks later, the Commission voted to adopt and seek comment on the NPRM.^{5/}

Both prior to and during the period between the release of the draft and final versions of the NPRM, interested parties weighed in on the implications of the Petition with a parade of filings and *ex parte* meetings. Parties representing the broadcast industry maintained that the Petition involved a simple request for an amendment to the technical rules, with no need for the Commission to consider other issues.^{6/} However, MVPDs and their trade associations expressed concern that, despite protestations to the contrary, broadcasters would seek to coerce them into retransmitting ATSC 3.0 signals, which would result in expensive equipment upgrades and engineering headaches, especially considering the new standard’s increased bandwidth requirements and new features, many of which are inconsistent with MVPD carriage.^{7/} In fact,

^{3/} Joint Petition for Rulemaking of America’s Public Television Stations, the AWARN Alliance, the Consumer Technology Association, and the National Association of Broadcasters, GN Docket No. 16-142 (filed Apr. 13, 2016).

^{4/} *In the Matter of Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, Draft Notice of Proposed Rulemaking, GN Docket No. 16-142 (rel. Feb. 2, 2017).

^{5/} *See NPRM*.

^{6/} *See, e.g.*, Letter of Rebecca Hanson, SVP of Sinclair Broadcast Group, to Marlene H. Dortch, Secretary of FCC, GN Docket No. 16-142 (filed Feb. 17, 2017); Letter of Patrick McFadden, Associate General Counsel of National Association of Broadcasters, to Marlene H. Dortch, Secretary of FCC, GN Docket No. 16-142 (filed Feb. 17, 2017); Letter of Gerard J. Waldron, Counsel to Pearl TV, to Marlene H. Dortch, Secretary of FCC, GN Docket No. 16-142 (filed Dec. 14, 2016).

^{7/} *See, e.g.*, Letter of Rick Chessen, SVP of Law & Regulatory Policy, NCTA, to Marlene H. Dortch, Secretary of FCC, GN Docket No. 16-142 (filed Feb. 16, 2017); Letter of Michael Nilsson, Counsel to American Cable Association, to Marlene H. Dortch, Secretary of FCC, GN Docket No. 16-142 (filed Feb. 13, 2017); Letter of Jill Canfield, Vice President for Legal & Industry, NTCA – The Rural Broadband Association, to Marlene H. Dortch, Secretary of FCC, GN Docket No. 16-142 (filed Dec. 21, 2016).

as noted by ATVA in its March 20, 2017 *ex parte* filing in this proceeding, broadcasters have already begun to do just that, attempting to force MVPDs to carry their ATSC 3.0 signals despite the public recognition by their representatives that such carriage is not technologically possible.^{8/} Representatives from independent programmers have similarly warned the Commission that, in the event that MVPDs are compelled to retransmit ATSC 3.0 streams, the increased bandwidth required would not leave enough available to continue to carry their content.^{9/}

II. MEDIACOM’S ADDITIONAL CONCERNS WITH ATSC 3.0 NPRM

The NPRM invites interested parties to comment on many of the issues raised in response to the Petition by and on behalf of MVPDs and independent programmers, reflecting recognition on the part of the Commission that, despite claims by the broadcasters, this is not a narrow technical proceeding. Mediacom shares the concerns of those parties who are justifiably worried about the risk of the “voluntary” transition becoming mandatory for MVPDs, particularly small and rural MVPDs, as a result of retransmission consent negotiations.^{10/}

In particular, as Mediacom has demonstrated on numerous occasions, retransmission consent negotiations, in their current form, are far from “voluntary.”^{11/} Moreover, there is no

^{8/} Letter of Mike Chappell, Executive Director of the American Television Alliance, to Marlene H. Dortch, Secretary of FCC, GN Docket No. 16-142 (filed Mar. 20, 2017).

^{9/} See Letter of Eight Independent Programmers to Marlene H. Dortch, Secretary of FCC, GN Docket No. 16-142 (filed Feb. 16, 2017).

^{10/} See *supra*, notes 7 and 8.

^{11/} See, e.g., Letter of Joseph E. Young, General Counsel, Mediacom Communications Corporation, GN Docket No. 16-142 (filed March 30, 2017); Letter from Mike Chappell, Executive Director, American Television Association, to Marlene H. Dortch, Secretary of FCC, MB Docket Nos. 15-216 and 10-71 at 1 (filed Jan. 6, 2017) (“existing rules do not protect the viewing public from broadcaster blackouts”); Reply Comments of Verizon, MB Docket No. 16-247 at 5 (filed Oct. 24, 2016) (“By virtue of broadcasters’ market position, normal marketplace dynamics often do not function as they would when the parties have relatively equal bargaining power.”); Comments of Mediacom, MB Docket No. 15-216 at ii (filed Dec. 1, 2015) (“Retransmission consent negotiations today produce one-sided agreements that force MVPD subscribers to absorb extraordinary increases in retransmission consent fees...driven by the use of threatened and actual blackouts as well as other coercive tactics.”).

reason to believe that such negotiations would be any more voluntary when they involve ATSC 3.0. Nonetheless, rather than repeat what already has been or will be said by or on behalf of MVPDs about the relationship between the ATSC 3.0 transition and retransmission consent, Mediacom's focus in these comments is on two specific situations that the Commission can and should address when crafting rules governing ATSC 3.0's adoption.

A. The Commission Should Address Concerns that MVPDs Will Not Be Able To Accommodate a Station's Relocation of Its ATSC 1.0 Signal Without Incurring Significant Costs.

As envisioned by the Petition and proposed in the NPRM, the transition to ATSC 3.0 would involve a complex system of hosting and facilities-sharing by same-market stations in order to allow them to begin broadcasting in ATSC 3.0 while continuing to transmit their ATSC 1.0 signals.^{12/} The objective of this approach is to ensure that over-the-air viewers can continue to receive the content of stations participating in the ATSC 3.0 transition without having to purchase ATSC 3.0 compatible equipment. It also is supposed to ensure that the stations participating in the transition remain available in ATSC 1.0 format to MVPDs and their customers.¹³

The issue that concerns Mediacom is that a station's decision to relocate its ATSC 1.0 signal may interfere with an MVPD's continued ability to receive and retransmit that station's

^{12/} NPRM at ¶ 2, note 3. To illustrate this, consider hypothetical Stations A and B, unaffiliated TV stations operating in the same market. Station A would upgrade its facilities in order to allow it to utilize ATSC 3.0 and would broadcast both its content and that of Station B in ATSC 3.0; meanwhile, Station B would broadcast both itself and Station A's content in ATSC 1.0 from its facilities.

¹³ Both Congress and the Commission have recognized in past broadcast technology transitions (e.g., the analog-to-digital transition and the spectrum auction reallocation) that the public interest strongly disfavors the modification of a station's signal where such modification would result in more than a *de minimis* number of viewers losing ready and reliable access to the station. *See, e.g.*, 47 U.S.C. 1452(b)(2) ("the Commission shall make all reasonable efforts to preserve...the coverage area and population served of each broadcast television licensee" during the post-incentive auction repacking); and *In the Matter of Advanced Television Systems and their Impact on Existing Television Broadcast Service*, Sixth Report and Order, 12 FCC Rcd. 14588 at ¶ 12 (1997) (noting that the primary goal of the DTV assignments was to align the new coverage area as closely as possible with the prior coverage area).

ATSC 1.0 signal without incurring significant, and otherwise unnecessary, costs. Because those costs ultimately will be borne by consumers – and because broadcasters engaged in retransmission consent discussions with MVPDs have indicated that they are unwilling to bear, or even share, any costs associated with the ATSC 3.0 transition – it is imperative that the Commission address this issue.

While there may be many ways to minimize the impact of a station's relocation of its ATSC 1.0 signal on MVPDs and their customers, Mediacom submits that the Commission at very least should make clear that a station and the MVPDs currently carrying that station have an obligation to consult with each other to evaluate how the station's decision to relocate its ATSC 1.0 signal will impact MVPD access to the station's signal and to attempt, in good faith, to find the most cost-efficient means of ensuring that the station's relocated ATSC 1.0 signal remains readily available to MVPDs. For example, if it is determined that one or more MVPDs in the market will be unaffected by a station's relocation of its ATSC 1.0 signal, an arrangement whereby those MVPDs share their access to the signal with other MVPDs in the market that would be adversely impacted by the station's relocation might ameliorate the issue.

Having the stakeholders discuss how to minimize the impact of a station's proposed ATSC 1.0 signal relocation may reduce the number of instances in which an MVPD would have to incur significant costs in order to maintain its access to a station's relocated ATSC 1.0 signal. Nonetheless, there may be cases in which an MVPD will face more than a *de minimis* expense in order to accommodate a station's relocation of its ATSC 1.0 signal. Mediacom believes that, in such situations, it would be entirely appropriate for the Commission to mandate that broadcasters bear those costs given the fact that the ATSC 3.0 transition is a broadcaster-sponsored initiative intended first and foremost to help stations' bottom lines.

There are, of course, other options that the Commission may want to consider that would not place the entire burden on the broadcaster. For example, can and should a fund be established (as was the case in connection with the spectrum auction) to reimburse MVPDs for costs incurred as a result of a station's relocation of its ATSC 1.0 signal? Can and should the Commission require cost-sharing among all the stakeholders (broadcasters and MVPDs) across the market to cover the expense of ensuring that all MVPD subscribers continue to have access to a relocated ATSC 1.0 signal? It is imperative that these and other ideas for addressing what otherwise could be devastatingly high transition-related costs for MVPDs – particularly smaller MVPDs – be front and center in this proceeding.

B. The FCC Should Ensure That a Retransmission Consent Dispute Between an MVPD and a Relocated ATSC 1.0 Station Does Not Disrupt the MVPD's Access to the Hosting Station, and Vice Versa.

Apart from the substantial financial and logistical investment involved in the proposed ATSC 3.0 transition (and the need for the Commission to address concerns that MVPDs and their customers will have to bear the cost of that investment), the NPRM leaves unasked questions about how the transition could be impacted by retransmission consent disputes. To the extent that the transition is effectuated through the sharing of alternate transmission mechanisms, such as a fiber or microwave feed, there is a risk that a dispute between an MVPD and one station could result in the MVPD, and its customers, losing the programming of multiple stations.

In order to guard against such an event, the rules adopted by the Commission to implement the transition to ATSC 3.0 should provide that, if the hosted and hosting stations decide to share a fiber or microwave connection for purposes of delivering the ATSC 1.0 signals of their two stations to an MVPD, the stations may not condition the MVPD's right to carry one

station on it having consent to carry all stations. Thus, if an MVPD and ATSC 1.0 hosting station become embroiled in a retransmission consent dispute that results in the hosting station blacking out the MVPD's access to its signal, the MVPD must continue to have access to the hosted station's ATSC 1.0 signal absent a separate retransmission consent dispute between the cable operator and the hosted station.

As indicated above, MVPDs have repeatedly demonstrated that the retransmission consent process is and has been desperately in need of reform.^{14/} Given the importance of MVPD delivery of TV programming, which represents 82% of overall TV viewership in the United States,^{15/} the Commission should ensure that the "voluntary" transition to ATSC 3.0 sought by the broadcasters does not put the uninterrupted access of MVPDs and their customers to ATSC 1.0 signals at risk due to the concerted action by otherwise unrelated stations.

III. CONCLUSION

The broadcast industry's motivation for requesting for permission to transition to ATSC 3.0 is not altruistic. Clearly, broadcasters see a potential financial upside in ATSC 3.0. And while consumers also may see benefits from the transition, the broadcasters should not be allowed to reap the benefits of the transition at the expense of their current over-the-air and MVPD viewership. In particular, the Commission's rules implementing the transition should include measures that will minimize the risk that the supposedly "voluntary" deployment of ATSC 3.0 not only will impede the ability of millions of Americans who obtain signals over-the-air to receive the same access to broadcast stations that they have now, but also increase the cost (and/or reduce the signal quality) of MVPD retransmissions of hosted ATSC 3.0 signals and

^{14/} See *supra*, note 11.

^{15/} See, Press Release, *82% of TV Households Subscribe to a Pay-TV Service*, Leichtman Research Group, (rel. Sept. 23, 2016) available at <http://www.leichtmanresearch.com/press/092316release.html>.

exacerbate the number of retransmission consent disputes and blackouts. For the reasons stated above, Mediacom joins with ACA, ATVA, NCTA and others in offering suggestions for measures the Commission can and should take to ensure that the ATSC 3.0 transition does not give a higher priority to the interests of the broadcast industry than to the interests of the viewing public (including MVPD subscribers).

Respectfully Submitted,

/s/

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